Office-Supreme Court, U.S.
FILED
AUG 8 1981
ALEXANDER L. STEVAS,
CLERK

Case No. 80-1867

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

EDWARD JOHN WILLIAMS,

Appellant,

v.

STATE OF OHIO

Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF OHIO

MOTION TO DISMISS; OR, IN THE ALTERNATIVE, TO AFFIRM

J. DAVID WEBB
Prosecuting Attorney
PAULDING COUNTY, OHIO
Attorney for Appellee
705 West Wayne Street
Paulding, Ohio 45879
Phone: AC (419) 399-4730

MIDWEST LAW PRINTERS AND PUBLISHERS, INC., Columbus, Ohio 43216

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

MOTION TO DISMISS; OR, IN THE ALTERNATIVE, TO AFFIRM 1

ARGUMENT IN SUPPORT OF MOTION TO DISMISS 2

ARGUMENT IN SUPPORT OF MOTION TO AFFIRM 3

PROOF OF SERVICE 6

TABLE OF AUTHORITIES

CASES **Page**

Rakas v. Illinois, 99 S. Ct. 421 1,4

U.S. v. Pitts, 588 F. 2d 102 (CA5, 1979)
cert. denied 99 S. Ct. 2171 5

CONSTITUTIONAL PROVISIONS:

United States Constitution
Fourth Amendment 4

STATUTES:

United States Code
Title 28, U.S.C. Section 1257 (2) 1,2

MOTION TO DISMISS; OR, IN THE ALTERNATIVE, TO AFFIRM

Appellee, State of Ohio, moves the Court to dismiss this cause on the following grounds:

1. This cause is not within this Court's jurisdiction under Title 28 of the United States Code, Section 1257 (2) as alleged in Appellant's Jurisdictional Statement;

2. This cause does not present a substantial federal question;

3. The federal question sought to be reviewed was not expressly passed on by the state court.

In the alternative, Appellee moves the Court to affirm the judgment of the Court of Appeals of Paulding County, Ohio, for the reason that its determination that Appellant lacked the necessary standing to challenge the search in question is in complete conformance with this Court's decision in *Rakas v. Illinois,* 99 S. Ct. 421; and that case plainly forecloses the questions urged for reversal in the case at hand.

ARGUMENT IN SUPPORT OF MOTION TO DISMISS

Title 28 of the United States Code, Section 1257 (2) confers jurisdiction upon this Court to review final judgments or decrees rendered by the highest court of a State:

> (2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

It is on this basis that Appellant claims this Court has jurisdiction. However; at page 7 of Appellant's Jurisdictional Statement, he admits "This statute is certainly not unconstitutional *per se*, ... "

By Appellant's own admission, this Court does not have jurisdiction of this cause on the basis of Title 28 of the United States Code, Section 1257 (2), as he alleges in his statement of the grounds on which the Jurisdiction of this Court is invoked.

Likewise, this cause does not present a substantial federal question. Appellant alleges that "this appeal squarely raises the issue as to whether a random motor vehicle stop, where there is no articulable or reasonable suspicion that a violation of law has been committed or that the vehicle or an occupant thereof is subject to seizure, is a constitutionally impermissable search and seizure under the Fourth and Fourteenth Amendments to the Constitution of the United States." However, the Court of Appeals of Paulding County, Ohio, did not find that this case presented a factual situation involving a "random" stop. In fact, the Court of Appeals of Paulding County, Ohio, stated: "We conclude that in spite of

the officer's statement that he stopped vehicles "at random," that he in fact only stopped at one time the number of vehicles he could reasonably check without interfering with the flow of traffic, that the officer was exercising a reasonable discretion, that the intrusions, if any, of defendant's privacy was warranted in the interests of vehicular safety, and that the stop was not violative of defendant's Fourth Amendment rights." Court of Appeals Memorandum Opinion, page 6. The case which Appellants seeks to have this Court review does not present a federal question involving a "random" stop of vehicular travel, but the systematic inspection of motor vehicles pursuant to authority granted by state statute, the constitutionality of which, Appellant does not question.

Likewise, the federal question sought to be reviewed was not expressly passed on by the state court. The Court of Appeals of Paulding County, Ohio, did not rule upon the constitutionality of a "random" stop of vehicular travel because it did not make the factual determination that the circumstances presented constituted a "random" stop.

ARGUMENT IN SUPPORT OF MOTION TO AFFIRM

The decision of the Court of Appeals of Paulding County, Ohio, is based primarily on its determination that Appellant had no standing to seek the suppression of the evidence sought to be suppressed:

> Since defendant had nor claimed no ownership in the vehicle and his only possessory interest as claimed was that claimed through Mr. Young who could not confer on defendant a valid possessory interest in a stolen vehicle, defendant

> could have no legitimate expectation of privacy in the vehicle and thus no standing to seek suppression of evidence obtained as a result of the stopping of the vehicle. Court of Appeals Memorandum Opinion, page 8.

As was pointed out by this Court in *Rakas v. Illinois*, 99 S. Ct. 421 at 425:

> A person who is aggrieved by an illegal search and seizure only through the introduction of damaging evidence secured by a search of a third person's premises or property has not had any of his Fourth Amendment rights infringed.

As was pointed out in *Rakas v. Illinois*, 99 S. Ct. 421 at 429:

> " . . . . , the question is whether the challenged search and seizure violated the Fourth Amendment right of a criminal defendant who seeks to exclude the evidence obtained during it. That inquiry in turn requires a determination of whether the disputed search and seizure has infringed an interest of the defendant which the Fourth Amendment was designed to protect.

The Fourth Amendment provides:

> The right of the people to be secure in *their* persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the

> place to be searched, and the persons or things to be seized. (Emphasis added)

The stolen vehicle in question cannot legitimately be considered amongst the "effects" of the Appellant which the Fourth Amendment is designed to protect.

This position is further supported by *U.S v. Pitts*, 588 F. 2d 102 (CA5, 1979) cert. denied 99 S. Ct. 2171, in which the Court of Appeals for the Fifth Circuit held that a mere possessor-driver of a stolen vehicle operated on a highway has no legitimate expectation of privacy in the VIN number observable through the windshield.

For the foregoing reasons, Appellee, State of Ohio, respectfully requests that this appeal be dismissed; or, in the alternative, that the judgement below be affirmed.

Respectfully submitted,

J. DAVID WEBB
Prosecuting Attorney
Paulding County, Ohio
Attorney for Appellee
705 West Wayne Street
Paulding, Ohio 45879
Phone: AC (419) 399-4730

PROOF OF SERVICE

I, J. David Webb, Prosecuting Attorney of Paulding County, Ohio, Appellee herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the 30th day of June, 1981, I served copies of the foregoing Motion to Dismiss; or, in the Alternative, to Affirm, on Patrick H. Young, Attorney for Appellant by delivering a copy thereof to his office at 106 East Jackson Street, Paulding, Ohio.

J. DAVID WEBB
Prosecuting Attorney
Paulding County, Ohio
Attorney for Appellee
705 West Wayne Street
Paulding, Ohio 45879
Phone: AC (419) 399-4730